IN THE

Supreme Court of the United States

October Term, 1976

No. 77-196

GENERAL FINANCE CORPORATION,
Petitioner,

v.

JOHN C. POLLOCK AND BARBARA POLLOCK
Respondents,

BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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September 14, 1977

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SUMMARY OF ARGUMENT

a) Jurisdictional Statement
Petitioner's jurisdictional statement required by Rule 23 does not comply with the provisions of Rule 23 (b)(i) and (b)(ii), although the information required by those subsections can be found elsewhere in the petition.

b) Questions for Review
Respondents respectfully suggest that the seven questions presented for review by petitioner can be narrowed down to only three questions, which are stated by respondents on pages 1 and 2 of this brief.

c) Statement of the Case
Respondents do not object to petitioner's statement of the case insofar as that statement relates to the facts material to the consideration of the petition. Respondents strenuously object, however, to the fact that petitioner included throughout its statement of the case several conclusory, self-serving statements of its intentions and reliances, which are not supported by the record, and several conclusory, self serving statements of law, rejected by the court below. None of these statements is properly includable in a statement of the case required by Rule 23.

d) Argument
(1) Respondents respectfully submit that the provisions of 15 U.S.C. §1639(a) are clear and unambiguous, in requiring that each of the disclosures itemized in that statute be made. This is evidenced by the fact that the statute provides that the creditor "shall dis-

close each" of the items. 15 U.S.C. §1639(a) (emphasis supplied). Respondents' position is further supported by the grammatical usage section of the Truth in Lending Act, §503 of the Act, 83 Stat. 167, which provides that the use of the word, "shall," indicates that an action of both authorized and required.

(2) In addition, the language of Regulation Z §226.8(d)(1), 12 C.F.R. §226.8(d)(1), can be construed in a manner consistent with the clear requirements of 15 U.S.C. §1639(a), and courts are required to so interpret the regulation.

(3) Informal Staff Opinion Letters of the Federal Reserve Board, while entitled to great weight, are not binding on courts, particularly when they are clearly erroneous, and in contravention of the clear language of the statute and regulation. Further, the 1974 and 1976 amendments to the Truth in Lending Act adding 15 U.S.C. §1640(f) indicate that only rules, regulations and interpretations of the Federal Reserve Board itself, and not of the staff of the Board, are binding and a defense against the imposition of liability. Since Informal Staff Opinion Letters are issued by the staff of the Board, and not by the Board itself, such letters are not binding on courts, and are not a defense against the imposition of liability.

(4) The issues raised by petitioner do not involve important questions of federal law undecided by the Court, and the court below has not decided a federal question in conflict

with the decisions of this Court, nor is there a conflict among the circuit courts of appeals as a result of the decision below, which was rendered in conformity with accepted and usual judicial proceedings. Accordingly, petitioner has failed to meet the requirements of Supreme Court Rule 19 necessary to grant its petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit, and the petition must be denied.

I. JURISDICTIONAL STATEMENT

Respondents do not question the fact that this Court has jurisdiction under 28 U.S.C. §1254(1) or that petitioner has filed the petition within the time required by 28 U.S.C. §2101(c). Respondents observe, however, that petitioner's jurisdictional statement does not comply with the provisions of Rule 23(b)(i) and (ii), although the information required by those subsections can be found elsewhere in the petition.

QUESTIONS PRESENTED FOR REVIEW

Respondents object to petitioner's formulation of some seven questions to be presented for review, and suggest that these seven questions can be narrowed down to only three questions, none of which meets the requirements of Rule 19:

(1) Whether the clear provisions of 15 U.S.C. §§1639(a)(1), (2), and (3) control over the provisions of 12 C.F.R. §226.8(d)(1), which is ambiguous in part.

(2) Whether courts are bound by Informal Staff Opinion Letters issued by employees of the Board of Governors of the Federal Reserve System.

(3) If and to the extent a creditor relies on an Informal Staff Opinion

Letter, is this reliance a defense against the imposition of liability.

STATEMENT OF THE CASE

Respondents strenuously object to petitioner's statement of the case. Rule 23(e) requires a concise statement of the case containing the facts material to consideration of the questions presented. Petitioner has chosen to set forth the statement of the case together with petitioner's own self-serving statements as to its intentions and reliances, which are unsupported by the record, 1/ and has further stated conclusions of law without citing any authority whatsoever for the statement. 2/

1/ See, e.g., petition at p. 5: "G.F.C. relied on the provisions of 12 C.F.R. §226.8(d)(1) . . ." (emphasis supplied), and petition at p. 6: "G.F.C. used the word 'may' in its disclosure ststement [sic], because Georgia has adopted the Uniform Commercial Code . . . ." There are no affidavits or other evidence before this Court to support either of the self-serving statements of petitioner.

2/ See, e.g., petition at p. 6: ". . . 12 C.F.R. §226.8(d)(1) . . . does not require disclosure of net loan proceeds." In fact, this conclusion of law was rejected by the court below.

In any event, petitioner's statement of the case certainly does not comply with Rule 23(e), which requires a "concise statement of the case containing the facts material to the consideration of the questions presented." Conclusory, self-serving statements of intentions, reliances, and of law, all of which are totally unsupported by the record, have no place in a statement of the case.

ARGUMENT

A. The Clear Language of 15 U.S.C. §§1639(a)(1), (2), and (3) Control Over the Ambiguous Language of 12 C.F.R. §226.8(d)(1).

Petitioner General Finance Corporation is what is commonly referred to as a "closed end" loan creditor. As such, it must, in part, make the disclosures required by 15 U.S.C. §1639, which requires that petitioner

> . . . shall disclose each of the following items, to the extent applicable:

(1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf.

(2) All charges, individually itemized, which are included in the amount of credit extended which are not part of the finance charge.

(3) The total amount to be financed (the sum of the amounts referred to in paragraph (1) plus the amounts referred to in paragraph (2)). (Emphasis supplied.)

It is imminently clear that 15 U.S.C. §1639(a) mandates that each of the disclosures shall be made, if applicable. The use of the word "shall" in the statute indicates that the disclosure is required. 3/

3/ §503 of the Truth in Lending Act, 83 Stat. 167, sets out the rules for grammatical usage for the Act, and provides in its relevant part that

> (2) [t]he word "shall" is used to indicate that an action is both authorized and required. (Emphasis supplied.)

Accordingly, each of the applicable 15 U.S.C. §1639(a) disclosures is required to be made.

Since in the instant case, each of the three items is applicable, each must be disclosed under the clear language of 15 U.S.C. §1639(a). Numerous courts have so held. E.g., Liner v. Aetna Finance Corp., 555 F.2d 1241 (5th Cir. 1977); Pollock v. General Finance Corp., 535 F.2d 295 (5th Cir. 1976), reh'g denied, 522 F.2d 1142 (5th Cir. 1977); Goodwin v. Beneficial Finance Co. of Alabama, 338 So.2d 1011 (Ala. 1976); see, McGowan v. Credit Center of North Jackson, Inc., 546 F.2d 73 (5th Cir. 1977).

These cases all stand for the proposition that closed end loan creditors such as petitioner are required under the provisions of 15 U.S.C. §1639(a)(1) to disclose the amount of credit of which the obligor has the use. In addition, charges such as recording fees, credit life insurance and credit disability insurance must be individually itemized as other charges under the provisions of 15 U.S.C. §1639(a)(2). The sum of the amounts disclosed under 15 U.S.C. §§1639(a)(1) and (a)(2) must be disclosed under 15 U.S.C. §1639(a)(3). Each of the disclosures "shall" be made under the provisions of this statute.4/

When interpreting a statute, one of the cardinal rules of statutory construction is that "the meaning of the statute must, in the first instance, be sought in the language in which the Act was framed, and if that is plain, . . . the sole function of the courts

4/ See footnote 3, supra.

is to enforce it according to its terms." Caminetti v. United States, 242 U.S. 470, 485 (1917). One court has also stated that "there is no safer nor better settled canon of interpretation than that when language is clear and unambiguous it must be held to mean what it plainly expresses, and no room is left for construction." Swarts v. Siegel, 117 F. 13, 18-19, (8th Cir. 1902). The language of 15 U.S.C. §§1639 (a)(1), (2), and (3) is crystal clear in requiring disclosure of each of the three elements: There is nothing whatsoever ambiguous about the statute. Accordingly, each of the elements must be disclosed, pursuant to the statute itself, without reference to its implementing regulation.5/

5/ 15 U.S.C. §1639(a)(1) deals with the amount of credit of which the obligor will have the actual use. In other words, disclosures required by this statute pertain to credit benefiting the obligor directly, such as cash to the obligor and consolidation of other obligations. Since these benefit the obligor directly, only the cumulative amount need be disclosed.

On the other hand, the "charges" to be "individually itemized" under 15 U.S.C. §1639(a)(2) relate to charges such as recording fees to perfect a security interest, credit life insurance, or credit disability insurance, all of which are designed to benefit the creditor, not the obligor. Since the creditor is the direct beneficiary of these charges (and often gets a

Petitioner asserts, however, that 12 C.F.R. §226.8(d)(1) compels a different result. That section of Regulation Z requires that creditors such as petitioner shall be disclosed, as applicable,

> (1) The amount of credit, excluding items set forth in paragraph (e) of this section, which will be paid to the customer or for his account or to another person on his behalf, including all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge, using the term "amount financed."
>
> 12 C.F.R. §226.8(d)(1).

If and to the extent there is any ambiguity present, the ambiguity arises from the fact that the Federal Reserve Board chose to combine the three disclosures required by 15 U.S.C. §§1639 (a)(1), (2), and (3) into only one

5/ (cont'd) substantial premium or kickback from the insurance company for selling the so-called "voluntary" credit insurance), the charges must be individually itemized.

section of Regulation Z (12 C.F.R. §226.8(d)(1)).6/

Reviewing 12 C.F.R. §226.8(d)(1) reveals that it virtually tracks the language of the three sections of 15 U.S.C. §1639(a)(1), (2), and (3). First, 12 C.F.R. §226.8(d)(1) requires disclosure of "the amount of credit... which will be paid to the customer or for his account or to another person on his behalf . . . ." This is virtually the identical language contained in 15 U.S.C. §1639(a)(1), and pertains to credit benefiting the obligor himself, and not the creditor. See footnote 5, supra.

Second, 12 C.F.R. §226.8(d)(1) requires the disclosure of "all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge...." This language is identical to the language contained in 15 U.S.C. §1639(a)(2), and pertains to charges benefiting the creditor, not the obligor. See footnote 5, supra.

Third, 12 C.F.R. §226.8(d)(1) requires disclosure of the sum of these elements, using the term "amount financed." This is directly analogous to the requirements imposed by 15 U.S.C. §1639(a)(3).

The Federal Reserve Board promulgated Regulation Z in accordance with the congressional mandate contained at 15 U.S.C. §1604:

> The [Federal Reserve] Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purpose of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. (Emphasis supplied.)

6/ This ambiguity results from the fact that the words "individually itemized" could modify only "all charges," or could modify both "the amount of credit . . . . which will be paid to the customer or for his account or to another person on his behalf," and also "all charges." It appears that the Federal Reserve Board, pursuant to the authority granted in 15 U.S.C. §1604, could choose to require individual itemization of all elements of the amount financed, since such individual itemization would provide for more meaningful disclosure of credit terms, thereby enabling the consumer to truly comparison shop as to the costs of credit. See 15 U.S.C. §1601; 12 C.F.R. §226.1. Under either construction of the Regulation, however, the amount of credit of which the obligor has the use must be disclosed.

The Congress delegated to the Federal Reserve Board broad authority to promulgate regulations necessary to render the Act effective. Mourning v. Family Publications Service, Inc., 411 U.S. 356, 365 (1973). These regulations must, however, carry out the purposes of the Act. The only time the Federal Reserve Board can make adjustments or exceptions to the Act is when to do so is to effectuate the purposes of the Act. It appears that to require by regulation the itemization of all elements of the amount financed could effectuate the purpose of the Act by providing a more meaningful disclosure of credit terms; to narrow the required disclosures in the manner suggested by petitioner would be outside the power of the Federal Reserve Board.

Respondents have shown that the disclosures required by 12 C.F.R. §226.8(d)(1) are indeed consonant with the disclosures required by 15 U.S.C. §§1639(a)(1), (2), and (3). To the extent there is a conflict, however, the provisions of the Regulation itself must fall, since the regulations are promulgated by administrative agencies, and not Congress. In the event of a conflict, the power of such an agency

> ... to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law -- for no such power can be delegated by Congress -- but the power to adopt regulations to carry into effect the will of Congress

> as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is mere nullity. Manhattan General Equipment Co. v. Commissioner of Internal Revenue, 297 U.S. 129, 134 (1936).

See also, e.g., Peters v. Hobby, 349 U.S. 331 (1955); Fawcus Mach. Co. v. United States, 282 U.S. 375 (1931); Helvering v. Sabine Transp. Co., Inc., 318 U.S. 306 (1943).

Since the Regulation is indeed consonant with the statute itself, the decision of the Fifth Circuit is correct.

Petitioner also relies on certain Informal Staff Opinion Letters of the Federal Reserve Board to support its position that 12 C.F.R. §226.8(d)(1) does not require disclosure of the amount of credit of which the borrower has the use. E.g., Informal Staff Opinion Letter of January 6, 1976, a copy of which was attached as Exhibit B-2 of the respondents' brief in opposition to petitioner's petition for rehearing; Letter No. 982, 4 CCH Consumer Credit Guide ¶31321 (Dec. 24, 1975); Letter No. 967, 4 CCH Consumer Credit Guide ¶31306 (Dec. 4, 1975). While these letters do stand for the proposition for which they are cited, they are clearly inconsistent with the requirements of the statute (and of the Regulation itself) and, based on the above analysis, are clearly erroneous, and entitled to no weight whatsoever.

The effect to be given these Board Letters will be discussed in the following section.

B. Informal Staff Opinion Letters of Employees of the Federal Reserve Board Are Not Controlling on Courts, and Are Not A Defense to the Imposition to Statutory Liability.

On each of these issues raised by petitioner herein, petitioner now contends that it relied on certain Informal Staff Opinion Letters issued by employees of the Federal Reserve Board.7/ Petitioner contends that these letters are absolutely binding on this Court, and further contends that these letters are an absolute defense to the imposition for statutory liability. Neither of these contentions has merit.

Initially, it must be observed that Informal Staff Opinion Letters are issued by employees of the Federal Reserve Board, and not by the Board itself, and are usually issued in response to a question regarding a particular factual situation. These letters attempt to explain the provisions of the Truth in Lending Act, Regulation Z, and Federal Reserve

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7/ There is no affidavit or other evidence before this Court establishing any such reliance by petitioner.

Board Interpretations of Regulation Z. Philbeck v. Timmers Chevrolet, Inc., 499 F.2d 971, 976 (5th Cir. 1974). Indeed, the Fifth Circuit, when ruling on the instant petitioner's petition for rehearing, noted that these Informal Staff Opinion Letters are the "least authoritative pronouncements" of the Federal Reserve Board. 522 F.2d at 1144.

The Congress clearly granted the Federal Reserve Board broad authority to promulgate regulations necessary to render the Truth in Lending Act effective. E.g., Mourning v. Family Publications Service, Inc., 411 U.S. 356, 365 (1973). While the Federal Reserve Board's pronouncements are entitled to great weight, they are not binding on courts and can, in fact, be totally rejected. See, e.g., Jones v. Community Loan & Investment Corp. of Fulton County, 526 F.2d 642 (5th Cir. 1976), reh'g denied, 544 F.2d 1228 (5th Cir. 1977), cert. denied, 45 U.S.L.W. 3764 (1977); Martin v. Commercial Securities Co., Inc., 539 F.2d 521 (5th Cir. 1976); Mirabal v. General Motors Acceptance Corp., 537 F.2d 871 (7th Cir. 1976); Pennino v. Morris Kirschman & Co., 526 F.2d 367 (5th Cir. 1976); Ives v. W. T. Grant Co., 522 F.2d 749 (2d Cir. 1975).

An administrative agency's construction of a regulation such as Regulation Z must be reasonably related to the purpose of the legislation itself. Thorpe v. Housing

Authority of the City of Durham, 393 U.S. 268, 280-81 (1969).

As the Court stated in Zuber v. Allen, 396 U.S. 168 (1969),

> [w]hile this Court has announced that it will accord great weight to a departmental construction of its own enabling legislation. . ., it is only one input in the interpretational equation....
>
> The Court may not, however, abdicate its ultimate responsibility to construe language employed by Congress.

Id., 396 U.S. at 192-193.

Thus, the intention of Congress is relevant in the first instance in choosing between various possible constructions. That is to say, an administrative regulation does not exist in a vacuum, but must be interpreted in a manner consistent with the purposes of the legislation as enunciated by Congress. This Court has so declared in Mourning v. Family Publications Service, Inc., 411 U.S. 356, 371 (1973). Accordingly, Informal Staff Opinion Letters issued by employees of the Federal Reserve Board which render Regulation Z inconsistent with the Truth in Lending Act itself must be totally discredited.

Further, reliance on these Informal Staff Opinion Letters is not a defense to the imposition of civil liability. Once a violation has been found, the only defenses to the assessment of statutory damages must arise under either 15 U.S.C. §§1640(c) or 1640(f). There are no other defenses available. Unless a creditor can establish that it is protected by one of these sections, the court must impose liability and award statutory damages.

The overwhelming majority of courts which have ruled on the bona fide error defense available under 15 U.S.C. §1640 (c) have held that this defense is available only for clerical errors which occurred despite a system for correcting them. E.g., Mirabal v. General Motors Acceptance Corp., supra; Ives v. W. T. Grant Co., supra; Haynes v. Logan Furniture Mart, 503 F.2d 1161 (7th Cir. 1974); Palmer v. Wilson, 502 F.2d 860 (9th Cir. 1974); Pedro v. Pacific Plan of California, 393 F.Supp. 315 (N.D. Cal. 1975); Doggett v. Ritter Finance Co. of Louisa, 384 F.Supp. 150 (W.D. Va. 1974); Buford v. American Finance Co., 333 F.Supp. 1243 (N.D.Ga. 1971); Ratner v. Chemical Bank New York Trust Co., 329 F.Supp. 270 (S.D.N.Y. 1971). Even if the instant petitioner unintentionally violated the Act, there is no question but that it intentionally omitted the required disclosures. This is not a clerical error, and a defense under 15 U.S.C. §1640(c) is not available to it.

In 1974, Congress amended the Truth in Lending Act to add 15 U.S.C. §1640(f), to provide an additional defense to the imposition of statutory liability. That section provides a defense for unintentional and bona fide errors made in reliance on a "rule, regulation, or interpretation" of the Federal Reserve Board. That defense is also not available to petitioner.

In Ives v. W. T. Grant Co., supra, the creditor argued that 15 U.S.C. §1640(f) should be construed to include Informal Staff Opinion Letters of the Federal Reserve Board and to include pamphlets provided by the Board as a defense against liability. The court noted that this position was anticipated by Congress, and expressly repudiated in Senate Report No. 93-278, Senate Committee on Banking, Housing and Urban Affairs, Truth in Lending Act Amendments [S. 2101], 93rd Cong., 1st Sess., at p. 13. In that proceeding the Committee recommended that the Act be amended to relieve a creditor of civil liability for any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board. The Senate Report stated that:

> In order to confer immunity from civil liability, the rule, regulation, or interpretation thereof must be approved by the Board itself, and not by the staff of the Board.
> Id.

The Ives court rejected the creditor's contention, noting that the creditor's defense "based upon purported reliance on staff letters and pamphlets is legally insufficient under [15 U.S.C. §1640(f)]." Ives, supra, 522 F.2d at 758.

Similarly, in Pennino v. Morris Kirschman & Co., supra, the court followed the Second Circuit and held that a 15 U.S.C. §1640(f) defense was not available unless there was reliance on a rule, regulation, or interpretation of the Federal Reserve Board itself. Id., 526 F.2d at 370, n. 3, 371, n. 8. Accordingly, a 15 U.S.C. §1640(f) is not available to petitioner since the Federal Reserve Board itself has not spoken as to any of the issues raised by petitioner herein.

As a final point, petitioner is a multi-state lender, and is certainly charged with knowledge of the developing case authority under the Truth in Lending Act. To allow petitioner to avoid statutory liability on the facts before this Court would do violence to the very purpose of the Act itself.

CONCLUSION

The Fifth Circuit thoroughly considered the issues before it in its initial opinion rendered at 535 F.2d 295. After receiving this adverse decision, petitioner filed a petition for rehearing en banc. Respondents were granted permission and filed a brief in opposition to the petition for rehearing en banc. In addition, there were two amici curiae briefs filed in support of petitioner's position, one by Industrial Finance & Thrift Corp., and the second by the Federal Reserve Board itself. The Fifth Circuit again thoroughly considered the arguments of the parties, as well as the positions of the amici, and upheld its earlier ruling, as reported at 552 F.2d 1142.

It seems imminently clear that over the period of time of more than two years between the filing of the notice of appeal in this case and the entry of the Fifth Circuit's second opinion in 1977, the Fifth Circuit made a most meticulous inquiry as to the merits of the case, after thoroughly considering all points of view, particularly the point of view of the Federal Reserve Board itself. After considering all points, the Fifth Circuit again ruled in respondents' favor. Respondents respectfully submit that the decisions of the Fifth Circuit should not be disturbed.

When considering the instant petition, this Court should not neglect to note that there is no major controversy of national significance involved. There is no question but that a clear and

unambiguous statute must be enforced in accordance with its terms. This Court has so ruled on may occasions. E.g., Caminetti v. United States, 242 U.S. 470, 485 (1917). This "plain meaning" rule controls even where an administrative agency has been delegated broad authority to promulgate regulations, and particularly where the agency has interpreted the regulation by Informal Staff Opinion Letters in derogation of the Regulation itself which can be construed in a manner consonant with the statute. Again, this Court has so ruled on many occasions. E.g., Zuber v. Allen, 396 U.S. 168, 192-193 (1969); Manhattan General Equipment Co. v. Commissioner of Internal Revenue, 297 U.S. 129, 134 (1936).

Secondly, the question of whether the Informal Staff Opinion Letters issued by an employee of the Federal Reserve Board are binding on courts has been decided adversely to petitioner's position by both decisions of numerous courts of appeals, and by Congress itself, when enacting 15 U.S.C. §1640(f).

Thirdly, there is no conflict among the circuit courts of appeals, there are no undetermined but important questions of federal law involved, and there is no meritorious contention that the United States Court of Appeals for the Fifth Circuit has departed from the accepted and unusual course of judicial proceedings.

Further, it does not appear that any person faces significant liability if the instant petition is denied. Decisions are uniform in holding that the Truth in Lending Act is a remedial statute, to be liberally and favorably

construed in favor of the consumer. The statutory penalty imposed is small in light of the important national policy of providing a meaningful disclosure of credit terms.

Indeed, it is a very simple matter for a multi-state creditor such as petitioner to revise its disclosure forms to comply with judicial decisions as clearly correct as the one under review here. Petitioner has not asserted, and indeed cannot assert, that it would violate the Act by revising its forms to provide the more meaningful disclosures required by the lower court, and by numerous other decisions. Had petitioner chosen to revise its forms at the time of the decision herein, it would have very limited, and perhaps no, civil liability whatsoever (except in the instant case) for such violations in light of the one-year statute of limitations imposed under 15 U.S.C. §1640(e). If and to the extent that petitioner has failed to revise its forms in accordance with judicial decisions, it does so at its own folly.

In summary, respondents respectfully submit that the United States Court of Appeals for the Fifth Circuit applied the proper legal standards in considering the legal issues before it. The Fifth Circuit thoroughly considered the arguments and briefs of counsel for the parties, as well as the briefs of amici curiae filed on behalf of petitioner by the Federal Reserve Board itself and Industrial

Finance & Thrift Corporation, another multi-state creditor. Respondents respectfully submit that the lower court thoroughly and correctly decided all issues before it, and request that this Court deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this day served three (3) copies of the foregoing Brief in Opposition to a Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit by depositing said copies in the United States mail, with air mail postage prepaid, addressed to:

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This the 14th day of September, 1977.

GRAYDON W. FLORENCE, JR.